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ON - THE - JOB

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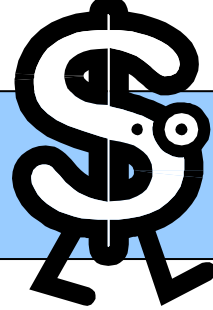
Commissioner's Corner

R. Lee Ellertson, Commissioner

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2005 Contest Winners walk away with big money

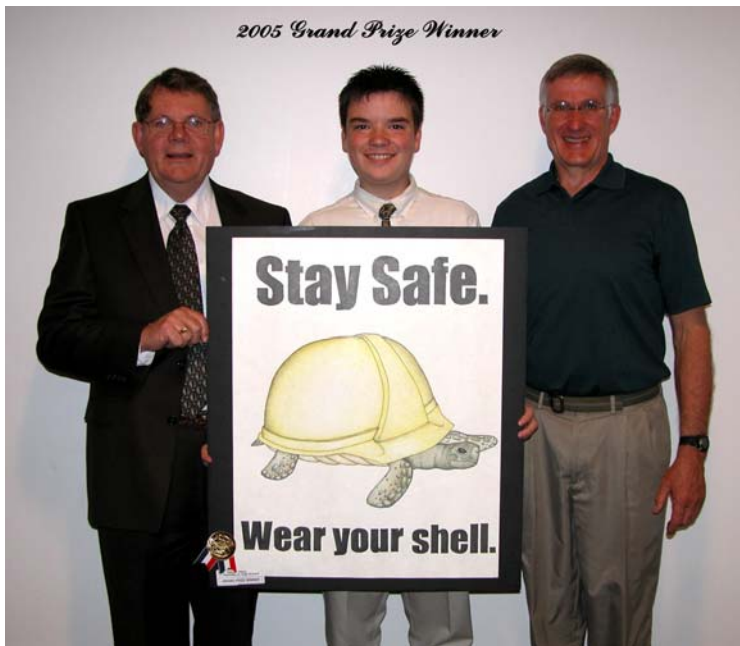


When Garrett Olsen of Kaysville Jr. High turned in his art assignment to Steve Roundy, his art teacher, he never expected to be rewarded so well. Olsen was selected as the Grand Prize Winner in the Utah Labor Commission's statewide Workplace Safety Poster Contest and took home a check for \$500 for his winning entry. He was chosen from almost 1,000 entries this year

submitted by 20 different middle and junior high schools. The poster contest, in its eighth year, is part of the Labor Commission's ongoing media campaign to "Take Safety Seriously". It is open to all middle and junior high schools across Utah, both private and public.

Because the workplace impacts all people and families in Utah, the Utah State Legislature appropriated funds generated from a percentage of the workers' compensation premium to the Labor Commission to be used in informing citizens of the need for workplace safety. As students in the junior high and middle schools participate in the technology/life/careers "TLC" project, we believe it is important to incorporate workplace safety into this training by teaching and stressing safety.

(continued on page 2...)



Garrett Olsen of Kaysville Jr. High School holds his Grand Prize winning poster with Comm. Lee Ellertson (l) and his art teacher, Steve Roundy (r)

This contest has generated great interest in workplace safety and those schools who have participated in the past have found it both rewarding and educational. The workplace safety posters can either be done through the art department, or integrated into the TLC curriculum serving as a motivational learning tool.

In addition to Garrett's prize, Kaysville Jr. High School was also a big winner. The Labor Commission matches any money won by students with an equal award to the school as well. In addition to Olsen's \$500 prize, Valerie Stefan Naegle took First Runner-up and was awarded \$300, and both Tyler McCombs and Brady Hackmeister took



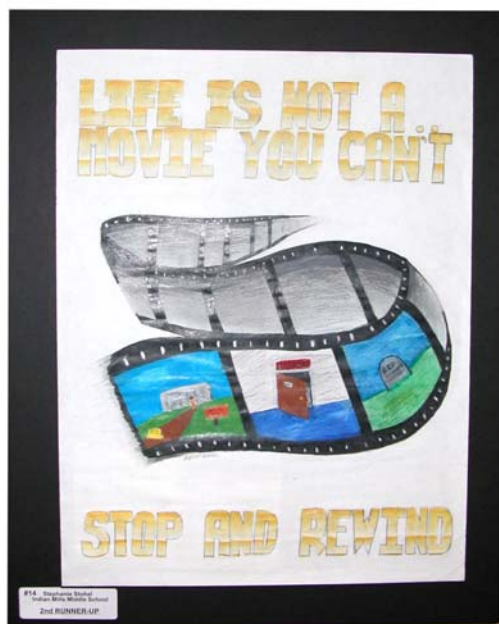
Stefan Naegle, Kaysville Jr. High
1st Runner-up

Middle School took 3rd place honors and \$300 for her entry.

The other Honorable Mention awards who each received \$100 for them and their schools include: Natalie Fang, Michelle Thompson, and Kevin Smart of Northwest Middle School; Allison Brown, Olympus Jr. High School; and Carlin Sorenson and Shaleesa

Livingston of Ephraim Middle School.

These top 12 winners of the contest will each have their entry featured in the Labor Commission's Workplace Safety calendar for 2006. The Commission distributes over 25,000 of the safety calendars throughout the state and we consider it a very effective tool in generating awareness to the public of the need for safety in the workplace.



Stephanie Stonel, Indian Hills Middle School
2nd Runner-up

Honorable Mention for \$100 each, making a total of \$1,200 in matching prize money for Kaysville Jr. High to be used in their art department to further education.

The 2nd Runner-up check for \$300 was awarded to Stephanie Stonel of Indian Hills Middle School in Sandy and Jessica Boylan of Ephraim



Jessica Boylan, Ephraim Middle School
3rd Runner-up

Anyone interested in details of the contest for next year should contact Robyn Barkdull at the Labor Commission at (801) 530-6815 or by email at rbarkdull@utah.gov.

UOSH consultation improves safety statistics

By Amanda Lynn Christensen, Safety Coordinator - LynRus Aluminum Products and Joe Lyon, Industrial Hygienist - Utah OSHA Consultation

Since LynRus Aluminum Products began working with Joe Lyon of Utah OSHA Consultation Services in November 2004, LynRus has experienced a 47% decrease (January to June 2005) in the average number of OSHA recordable injuries compared with the same six-month period for 2004. The first half of this year has also seen a 28% decrease in the number of workers compensation claims, a 94% decrease in total claim costs, and a 92% decrease in the average claim cost.

“As a result of the OSHA Consultation team (Joe Lyon, Eldon Tryon, and Kate McNeill) being in the facility and discussing

safety issues, our safety statistics show that improvements are happening. Even though we are still in the corrective action stage of the project, reportable injuries to the Industrial Accidents Division and to our workers compensation insurance for the first six months of 2005 are below all previous five years for the same period,” says Butch Lodder, Controller at LynRus Aluminum Products.

Our consultant, Joe Lyon, did a comprehensive safety walkthrough of LynRus’ eight shops in March 2005. He found that we had many hazards in our shops and foundry area. Once all these hazards were identified, LynRus worked to correct the hazards and within one month, well over two-thirds of them were corrected. Within two months, all but a few hazards had not been corrected. It has been heartening to see the way that LynRus employees and management have joined together and worked diligently to correct hazards. Kevin Ostergaard, Operations Manager at LynRus, had this comment: “With the amount of problems our company had, to be able to get them fixed in the time we did is incredible. It was a lot of hard work but it has made our company a much safer place to work.”

The company was formed in 1949 by two brothers, Lynn and Russ, as a two-person fabricating, welding, and machine shop. The 60’s and 70’s brought some changes to the

company when they added a permanent mold foundry and die casting shop.

The company stayed small and experienced its ups and downs. Then in the late ‘80s, with about 15 employees, they developed a revolutionary product for the gymnasium accessory industry – the Aut-O-Loc. The patented Aut-O-Loc safety strap behaves as a seat belt for basketball backstops in the case of a winch or cable failure. The Aut-O-Loc became a

success and LynRus developed its product line. LynRus also offers custom cast aluminum components with full machining and assembly for all areas of industry.

“As a result of the (Utah) OSHA Consultation team being in the facility and discussing safety issues, our safety statistics show that improvements are happening.”

LynRus understood the importance of a safety program, but, like many companies, had not placed enough emphasis on it because of cost issues. In 1997, they created a written safety program and gradually began making safety an important part of the environment. “Educating ourselves about workplace safety (through Utah OSHA Consultation) has provided for positive dialogue and has helped us to view our work environment from a safety conscious point of view,” explains John Pos, Director of Sales at LynRus.

LynRus has a future goal of becoming a SHARP company. SHARP stands for Safety and Health Achievement Recognition Program and is a recognition program for companies that have exemplary safety and health. Last year they invited Robert Newman, another Utah OSHA Consultant, to present information to the management about the SHARP program. They continue to work toward achieving SHARP status.

Safety is now LynRus’ top priority, not only because of the importance of human life and well-being, but also because of the financial toll an accident can have on the organization. LynRus understands how an accident directly affects each employee, production, and the bottom line, and continues to work to integrate and improve safety within their manufacturing process.



NASA turns to local doctor for astronauts' muscle strength

Reprint from PROVO DAILY HERALD Thursday, May 12, 2005
By Chris Peterson

Faced with the prospect of massive physical degradation when sending a manned flight to Mars, NASA officials recently turned to a local orthopedic specialist for help. Dr. Alan Colledge, Medical Director of the Labor Commission of Utah, a member of Central Utah's orthopedic department, has published four

and endurance standards as they prepared for the Mars landing.

Colledge -- along with an ergonomist and a physical therapist -- met with NASA personnel, including flight surgeons, astronauts, athletic trainers, exercise physiologists, extramural

experts (with expertise in ergonomics and sports medicine rehabilitation) and a biomechanist.

"It was one of the more professionally stimulating things I've done in my career," Colledge said. "It was fascinating."

The meeting, held at the Johnson Space Center in Houston was held in preparation for NASA's future space flights to the Moon and Mars. NASA has begun preparing for a space flight to Mars, a three-year, 250-million mile endeavor.

One of the challenges is how to prevent astronauts from becoming physically invalid during the

medical articles on how fitness for duty and risk is determined in the occupational setting.

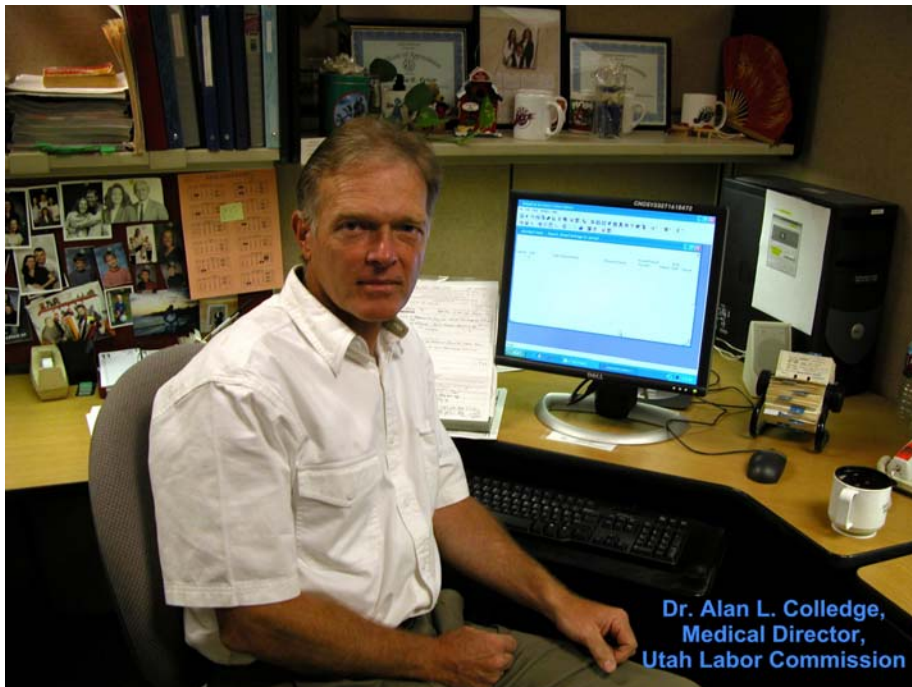
NASA found that those astronauts who have worked up to 130 days in space have lost up to 40 percent of their muscle mass and eight percent of their bone density. They also determined that space travel is considerably taxing to their balancing mechanism.

Since Colledge's published work is within the fitness and physiological realm, NASA sought his recommendations for astronauts' muscle strength

flight.

The deteriorating nature of astronauts' physiological condition while on a space flight is about the same that is experienced in the normal aging process but on an extremely accelerated scale. What has been learned by NASA, Dr. Colledge and others about the prevention of these conditions applies to more than just astronauts.

"What we learn in space is exactly the knowledge we need to know and apply in our everyday lives," Colledge said.



The “Rules Corner”

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.



R612-2-22 Industrial Accidents	Medical Records: Sets rules for use of medical records in workers’ compensation proceedings, in light of federal HIPAA standards.	Effective July 2, 2005
R612-2-5 Industrial Accidents	Medical Fees: Updates medical fee schedule for workers’ compensation cases. Increases fees in “evaluation & management” and “physical medicine categories.	Effective July 2, 2005
R612-2-18 Industrial Accidents	Dental Treatment: Clarifies procedures for payment of treatment expenses for dental injuries in workers’ compensation cases.	Effective July 2, 2005
Rule 612-1-3 Industrial Accidents	Official Forms: Defines circumstances in which employers and health care providers must file Forms 122 and 123.	Effective July 2, 2005
Rule 612-2-3 Industrial Accidents	Filings: Clarifies reporting requirements for first aid and other initial treatment of work related injuries	Effective July 2, 2005
R614-7-4 UOSH	Occupational Safety & Health: Establishes safety standards for raising framed walls.	Effective July 2, 2005
R614-1-4 UOSH	Occupational Safety & Health: Grants variance regarding methods for construction, repair and demolition of tall chimneys.	Published--may become effective August 2, 2005

Utah Court of Appeals Decisions

By Alan L. Hennebold, Deputy Commissioner

The Utah Court of Appeals recently decided two appeals arising from Labor Commission decisions. The first dealt with the Commission’s dismissal of an employment discrimination claim. The second addressed standards of proof in claims for permanent total disability compensation.

In **Lu v. St. Mark’s Hospital** (unpublished memorandum decision, Case No. 20050168, filed April 28, 2005) Ms. Lu filed a complaint with the Commission alleging that her employer had unlawfully discriminated against her. The employer denied any unlawful discrimination,

but also established that it had taken all remedial action Ms. Lu would be entitled to even if she were to



prevail on her complaint. Under these circumstances, the Commission dismissed Ms. Lu’s complaint as moot. In reviewing the Commission’s decision, the Court of Appeals observed that a complaint is moot when the requested relief
See **Decisions** page 6.

Decisions continued from page 5

cannot affect the rights of the litigants. Because Ms. Lu had already received all relief available under Utah law, the Commission had properly dismissed her complaint as moot.

In **Martinez v. Labor Commission et al**, (published decision, Case No. 20040590, filed June 30, 2005), Mr. Martinez filed a claim under § 413 of the Workers' Compensation Act for permanent total disability compensation. The Commission held it was Mr. Martinez's burden to prove that he met each of the tests for permanent total disability set out in §413(1)(b) and (c) of the Act. Because Mr. Martinez had not satisfied one of those tests—the requirement of §413(1)(c)(iii) that he be unable to perform the

essential functions of his previous employment--the Commission denies his claim for compensation.

The Court of Appeals ruled that the Commission had erred in requiring Mr. Martinez to prove the elements set out in §413(1)(c). Instead, the Court concluded that the elements of §413(1)(c) were affirmative defenses that the employer must prove. The Court proceeded to evaluate the evidence and find that Mr. Martinez could not perform the essential functions of his previous work. The Court therefore ruled that Mr. Martinez was entitled to permanent total disability compensation.

The power to determine your outcome - ADR

By Bel Randall, Program Administrator

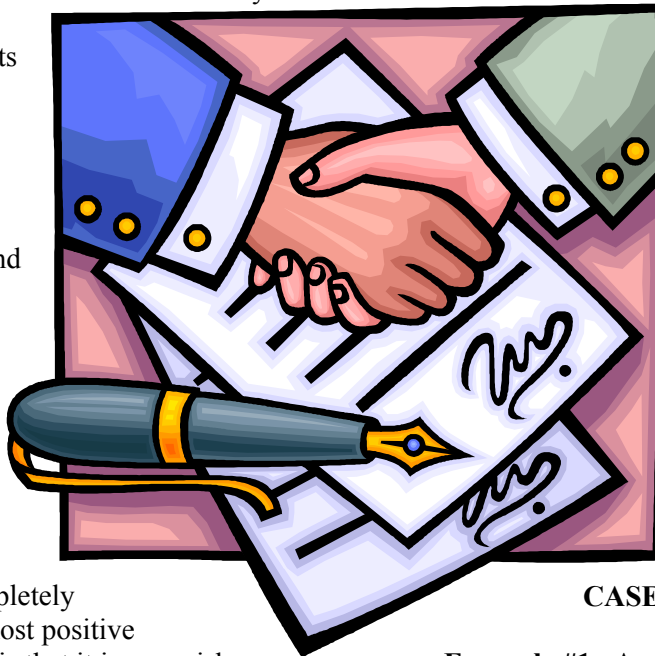
The Utah Antidiscrimination and Labor Division (UALD) was the first state agency to use mediation to resolve employment disputes. Alternative Dispute Resolution (ADR) was introduced in May of 1993 to assist in the early closure of employment discrimination complaints through the use of the Resolutions Conference (mediation). Because of its success, the program has expanded to include complaints in housing and wage disputes as well. Currently, the ADR Section closes approximately 63 % of its cases through the process of mediation.

The process is informal and participation is completely voluntary. One of the most positive attractions of mediation is that it is a no-risk proposition due to the fact that all parties involved have the option of attempting to resolve their issue first without giving up any right to proceed to investigation, litigation, or any other administrative process. A skilled mediator “facilitates

communication, encourages exchange of information and ideas, tests the reality of parties perception and ideas, advises, suggests, translates what is said to detoxify the emotional climate, and at times

recommends and persuades,” all in the service of assisting parties to reach their own agreement. Mediation resolves disputes through the assisted exercise of a power which most parties do not even realize they have until they no longer have it: the power to determine their own outcome by reaching a mutually acceptable resolution to their dispute.

The following scenarios are all actual cases that have been mediated by UALD and illustrate the success of the process for all parties involved.



CASE EXAMPLES:

Example #1. An employee had filed a wage claim against a subcontractor alleging the subcontractor had not paid him for work completed. A Resolutions Conference (mediation) was conducted in an attempt to resolve the dispute. The subcontractor failed to appear at the conference, but the general contractor

was present. At the time of the mediation, general contractors were responsible for payment of wages in the event that one of their subcontractors failed to pay an employee's wages. The issue was eventually resolved with the general contractor agreeing to pay a portion of the wages due. In addition, the general contractor was so impressed with the manners and demeanor of the claimant that he offered the claimant a job, which the claimant accepted. Through the mediation process, this dispute turned out to be a win-win situation for everyone.

Example #2. "Bob", a former employee of a temporary employment agency, had filed an age discrimination charge against the agency because Bob believed he had not been dispatched to work for a specific employer because of his age. Initially, he had been dispatched to work for this specific company, but when Bob reported to work he was told the company was not ready to employ him because they had not received the shipment of parts and machines they had been expecting. The company representative then informed Bob it would be another week or two before they would have any work for him to do. When Bob didn't hear from the company after the passage of the two weeks, he went to the agency and observed that younger employees were being dispatched to work for the same company. Rather than talk to an agency representative about his concerns, Bob filed a charge against the employment agency. Mediation with the Labor Commission was scheduled and the agency sent a representative to the session who was very articulate, knowledgeable, and understanding.

It turned out that Bob should have re-registered with the temp agency once the company told him that it would not be able to employ him right away. Had he registered with the agency again, the agency would have been in a position to dispatch him to the employer. After Bob understood the hiring/selection/dispatch process, he ended up shaking hands and apologizing to the company for having filed a charge against it. The agency, in turn, ended up dispatching Bob to another job.

Example #3. "Mary" filed a discrimination charge against an employer, alleging she was discriminated against based on her disability. She alleged that she had been made fun of and called names related to her disability and eventually terminated. Through the use of a skilled mediator, the matter was settled. The respondent offered a cash settlement, along with reinstatement of Mary into a similar position in one of its other stores, a written apology, a year's worth of coupons which she could redeem for double cheeseburgers, and an offer to train its employee's about the Americans With Disabilities Act.

Example #4. "Carol" filed a discrimination charge against her employer alleging she had been sexually harassed and retaliated against for having complained of the harassment. Carol alleged that while attending a conference, the company took all of its managers to a professional basketball game and while at the game, the president of the company brought her alcoholic



drinks until she was intoxicated. She alleged that the president drove her back to her hotel and came to her room for sexual favors. Carol alleged that the president threatened her with termination if she reported the incident to anyone. She alleged that the perpetrator stalked her while at the conference and even entered her room unannounced. Carol asserted that she objected to the treatment. Several weeks after she returned from the conference,

Carol received a phone call from the perpetrator accusing her of slander and telling her that her termination papers were ready. She alleged that she was forced to lie about the situation, which she did to save her job.

The parties agreed to a resolution and the matter was settled for a monetary settlement in excess of \$100,000, payment of legal fees, payment of family insurance coverage for 12 months, and a positive letter of reference. In addition, the company agreed to provide sexual harassment training to its management team. See **Alternate Dispute Resolution** – page 8

Alternate Dispute Resolution

.....continued from page 7

Example #5. “John”, the Charging Party, was an individual with a disability, who applied for a position within a company. When John was notified he would receive an interview, he requested a disability accommodation for the interview. When the company manager discovered John had requested the accommodation, he assumed John was not qualified for the position and did not interview him.

John felt the Americans With Disabilities Act had been violated because the manager assumed that if he had asked for disability accommodations for the interview, he could not do the job. John alleged he had not received a fair opportunity to prove himself.

During mediation, the company acknowledged the situation should have been handled better. The matter was settled when the company agreed to provide John with a cash settlement, a letter of apology, and that they would conduct American with Disabilities Act Training for its employees.

The Utah Anti-discrimination and Labor Division welcomes your questions about the ADR program and the opportunity to explain the benefits for both charging parties and respondents to reach a mutually acceptable resolution to their dispute. Please call (801) 530-6924 for further information.